

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #7	CCRB Case #: 201809421	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/09/2018 3:40 PM	Location of Incident: East 138th Street and Grand Concourse; 44th Precinct Stationhouse	Precinct: 40	18 Mo. SOL 5/9/2020	EO SOL 12/24/2020	
Date/Time CV Reported Mon, 11/12/2018 3:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/12/2018 3:32 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Mcgee	13373	920583	GANG BX
2. DT3 Edward Carrasco	1567	946828	GANG BX
3. POM Ryan Blair	30154	950086	GANG BX

Officer(s)	Allegation	Investigator Recommendation
A.POM Ryan Blair	Discourtesy: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair spoke discourteously to § 87(2)(b)	
B.POM Ryan Blair	Abuse: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Ryan Blair	Abuse: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair frisked § 87(2)(b)	
D.POM Ryan Blair	Abuse: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair searched § 87(2)(b)	
E.DT3 Edward Carrasco	Abuse: At East 138th Street and Grand Concourse in the Bronx, Detective Edward Carrasco searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM John Mcgee	Discourtesy: At East 138th Street and Grand Concourse in the Bronx, Police Officer John McGee spoke discourteously to § 87(2)(b)	
G.POM John Mcgee	Abuse: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee strip-searched § 87(2)(b)	
H.POM Ryan Blair	Abuse: At the 44th Precinct Stationhouse in the Bronx, Police Officer Ryan Blair strip-searched § 87(2)(b)	
I.DT3 Edward Carrasco	Abuse: At the 44th Precinct Stationhouse in the Bronx, Detective Edward Carrasco strip-searched § 87(2)(b)	
J.POM John Mcgee	Discourtesy: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee spoke discourteously to § 87(2)(b)	
K.POM John Mcgee	Abuse: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee searched § 87(2)(b)'s recording device.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On November 12, 2018, § 87(2)(b) filed the following complaint with the CCRB via the Call Processing System.

At approximately 3:40 p.m. on November 9, 2018, three officers, Police Officer John McGee, Police Officer Ryan Blair, and Detective Edward Carrasco from the Bronx Gang Unit, stopped § 87(2)(b)'s vehicle on East 138th Street and Grand Concourse in the Bronx because his vehicle had tinted windows. The officers approached § 87(2)(b)'s vehicle and Police Officer Blair allegedly asked § 87(2)(b) "You didn't hear the fucking sirens?" (**Allegation A: Discourtesy – Word, § 87(2)(g)**). The officers instructed § 87(2)(b) to exit his vehicle and he did so. After § 87(2)(b) exited his vehicle, Police Officer Blair searched it (**Allegation B: Abuse of Authority – Vehicle Search, § 87(2)(g)**). Police Officer Blair also frisked and searched § 87(2)(b) and he found a brown paper bag, which contained oxycodone pills, in his pocket (**Allegation C: Abuse of Authority – Frisk, § 87(2)(g)**) (**Allegation D: Abuse of Authority – Search of Person, § 87(2)(g)**). After he found the pills, Police Officer Blair allegedly entered and searched § 87(2)(b)'s vehicle again (**within Allegation B**).

Detective Carrasco allegedly entered § 87(2)(b)'s vehicle and searched it (**Allegation E: Abuse of Authority – Vehicle Search, § 87(2)(g)**). After Detective Carrasco exited § 87(2)(b)'s vehicle, Police Officer McGee allegedly said, "Fuck it - 'cuff him" (**Allegation F: Discourtesy – Word, § 87(2)(g)**). § 87(2)(b) tried to explain himself, but Police Officer Blair allegedly told him, "Shut the fuck up" (**within Allegation A**). Police Officer Blair handcuffed § 87(2)(b) and placed him in the police vehicle. As the officers were looking for § 87(2)(b)'s car keys, Police Officer Blair allegedly told § 87(2)(b) "You think this is some kind of fucking game? We going to figure this out - where the fuck is the key? Because we'll leave that shit right there - middle of the freeway" (**within Allegation A**). The officers eventually found § 87(2)(b)'s car keys and they entered the police vehicle. The officers escorted § 87(2)(b) to the 44th Precinct Stationhouse in the Bronx.

At the stationhouse, Police Officer McGee, Police Officer Blair, and Detective Carrasco strip-searched § 87(2)(b) in a private room (**Allegation G: Abuse of Authority – Strip Search, § 87(2)(g)**) (**Allegation H: Abuse of Authority – Strip Search, § 87(2)(g)**) (**Allegation I: Abuse of Authority – Strip Search, § 87(2)(g)**). The officers eventually placed § 87(2)(b) in a holding cell. While in the cell, § 87(2)(b) asked the officers if he could have one of the pills that were found in his possession and Police Officer McGee allegedly replied, "We don't fucking do that here" (**Allegation J: Discourtesy - Word, § 87(2)(g)**). At some point, Police Officer McGee allowed § 87(2)(b) to make a call to his wife using his own cellphone. When § 87(2)(b) was finished with his call, he attempted to lock his cellphone, but Police Officer McGee grabbed § 87(2)(b)'s cellphone before he could do so and he began scrolling through it (**Allegation K: Abuse of Authority – Search of Recording Device, § 87(2)(g)**).

§ 87(2)(b) was eventually issued a Desk Appearance Ticket (DAT) and he was released from the stationhouse (Board Review 01). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation (B) Abuse of Authority: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair frisked § 87(2)(b)

Allegation (D) Abuse of Authority: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair searched § 87(2)(b)

Allegation (E) Abuse of Authority: At East 138th Street and Grand Concourse in the Bronx, Detective Edward Carrasco searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b)'s vehicle had tinted windows at the time it was stopped, and § 87(2)(b) was eventually charged for the violation (Board Review 02).

§ 87(2)(b) stated that at the time of the vehicle stop the officers approached his vehicle and Police Officer McGee instructed him to exit it (Board Review 03). After § 87(2)(b) exited his vehicle, Police Officer Blair entered and searched the vehicle. Police Officer Blair found a “cigar holder” inside of § 87(2)(b)'s vehicle and he asked § 87(2)(b) what it was used for. § 87(2)(b) told Police Officer Blair that the cigar holder was a way to put out a cigar without damaging it. Police Officer Blair asked § 87(2)(b) why the cigar holder smelled like marijuana, if he had been smoking in the vehicle, and if he had any marijuana inside of the vehicle. § 87(2)(b) believed Police Officer Blair asked him those questions because he “must have opened” the cigar holder. § 87(2)(b) told Police Officer Blair, “No – there’s no weed in the car.” None of the officers mentioned marijuana again.

During his interview, § 87(2)(b) stated that his vehicle did not smell like marijuana at the time of the incident, he did not have any marijuana on his person or in his vehicle, and he did not consume any marijuana prior to the vehicle stop. However, during a follow-up statement, § 87(2)(b) described the “cigar holder” as a small plastic cylinder, which is similar to a marijuana grinder. It did not have anything inside of it at the time of the incident, including marijuana or cigar remnants. When asked if the cigar holder smelled like marijuana, § 87(2)(b) said, “It holds a stench because that's normally what would be in there.”

§ 87(2)(b) stated that during the vehicle stop Police Officer Blair frisked and searched him as well. Police Officer Blair found a brown paper bag in § 87(2)(b)'s pocket which contained oxycodone pills. § 87(2)(b) told Police Officer Blair that the medication was prescribed to him and that the prescription bottle was in his vehicle. Police Officer Blair searched § 87(2)(b)'s vehicle again and he found a prescription bottle. Police Officer Blair told § 87(2)(b) that the medication in the brown paper bag was not the same medication that was prescribed to him according to the bottle. Detective Carrasco also entered and searched § 87(2)(b)'s vehicle. After Detective Carrasco exited § 87(2)(b)'s vehicle, Police Officer Blair handcuffed § 87(2)(b) and placed him in the police vehicle. § 87(2)(b) was arrested and taken to the stationhouse.

Police Officer McGee, Police Officer Blair, and Detective Carrasco stated that upon approaching § 87(2)(b)'s vehicle, § 87(2)(b) rolled down the vehicle’s windows and they immediately detected an odor of marijuana (Board Review 04) (Board Review 05) (Board Review 06). Police Officer McGee did not observe any contraband in plainview inside of § 87(2)(b)'s vehicle, but § 87(2)(b) told him that he had just finished smoking. The officers instructed § 87(2)(b) to exit his vehicle and he did so. Police Officer McGee said Police Officer Blair frisked and searched § 87(2)(b). Police Officer Blair said he only frisked § 87(2)(b) and Detective Carrasco said that either Police Officer Blair or Police Officer McGee frisked and searched § 87(2)(b) but he did not know which one.

All of the officers stated that none of them searched § 87(2)(b)'s vehicle on East 138th Street and

Grand Concourse, but Detective Carrasco did enter § 87(2)(b)'s vehicle at some point to transport it to the stationhouse. Detective Carrasco said he did not do anything inside of § 87(2)(b)'s vehicle besides drive it and no one else assisted him with transporting it to the stationhouse. Police Officer McGee stated that he may have entered his head into § 87(2)(b)'s vehicle during the vehicle stop in order to ensure that no one else was inside of it, but he did not open any compartments while doing so. Police Officer McGee explained that although the officers did not perform a vehicle search during the vehicle stop, they could have done so lawfully because of the marijuana odor.

Police Officer McGee prepared a complaint report and an arrest report in regards to the incident where he explained that § 87(2)(b)'s vehicle was stopped due to excessively tinted windows. Both § 87(2)(b) and § 87(2)(b)'s vehicle had a strong smell of marijuana at the time the vehicle was stopped, and § 87(2)(b) stated during the vehicle stop that he had just smoked marijuana (Board Review 02) (Board Review 07). Upon further investigation, the officers found § 87(2)(b) to be in possession of a marijuana grinder, and morphine and oxycodone pills. § 87(2)(b) was charged with criminal use of drug paraphernalia, criminal possession of a controlled substance, and a tint violation.

According to *People v. Chestnut*, whenever an officer has reasonable belief that a vehicle contains contraband, it constitutes probable cause and a search of the vehicle may be conducted (Board Review 08). The court established that the odor of marijuana in a vehicle provides enough reasonable belief for an officer to assume that the vehicle may contain contraband, so it could be searched under those circumstances, and the probable cause that is established through these situations also allows officers to search any occupants of the vehicle (43 AD2d 260 [3d Dept. 1974]).

§ 87(2)(b)'s hesitation in acknowledging his cigar holder's affiliation with marijuana, including the fact that it was a marijuana grinder, affects his credibility in regards to whether there was a presence of marijuana odor inside of his vehicle at the time of the incident. Given § 87(2)(b)'s reluctance, and the fact that the officers' statements were corroborated by the paperwork that was generated for this incident where § 87(2)(b) was charged for drug paraphernalia, § 87(2)(g)

§ 87(2)(g)

Allegation (A) Discourtesy: At East 138th Street and Grand Concourse in the Bronx, Police Officer Ryan Blair spoke discourteously to § 87(2)(b)

Allegation (F) Discourtesy: At East 138th Street and Grand Concourse in the Bronx, Police Officer John McGee spoke discourteously to § 87(2)(b)

Allegation (J) Discourtesy: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee spoke discourteously to § 87(2)(b)

Allegation (K) Abuse of Authority: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee searched § 87(2)(b)'s recording device.

It is undisputed that there was a brief delay in stopping § 87(2)(b)'s vehicle during the incident because § 87(2)(b) did not initially notice the unmarked police vehicle behind him. § 87(2)(b) stated that when the officers eventually stopped his vehicle and approached it, Police Officer Blair told him, "You didn't hear the fucking sirens?" Throughout the interaction, Police Officer Blair told § 87(2)(b) "Shut the fuck up," and "You think this is some kind of fucking game? We going to figure this out - where the fuck is the key? Because we'll leave that shit right there - middle of the

freeway." In addition, Police Officer McGee told the other officers, "Fuck it – 'cuff him," in front of § 87(2)(b) at the time he was arrested, and at the stationhouse, Police Officer McGee told § 87(2)(b) "We don't fucking do that here," after § 87(2)(b) requested to take one of the pills that were confiscated from him. § 87(2)(b) also stated that when he arrived at the stationhouse, Police Officer McGee allowed him to use his own cellphone to call his wife. After § 87(2)(b) was done speaking to his wife, Police Officer McGee took § 87(2)(b)'s cellphone from him before he could lock it and he began searching through it.

Police Officer McGee, Police Officer Blair, and Detective Carrasco stated that they did not find § 87(2)(b)'s failure to notice the unmarked police vehicle as unreasonable given the factors surrounding the vehicle stop, such as the tinted windows, the heavy traffic, and the general assumption that the unmarked vehicle is not a police vehicle. Police Officer Blair and Police Officer McGee stated that none of the officers used any profanity while speaking with § 87(2)(b) during the incident, including themselves. Detective Carrasco also stated that he did not hear any of the officers using any profanity with § 87(2)(b). Police Officer McGee stated that he allowed § 87(2)(b) to make approximately six to seven calls to his wife while he was at the stationhouse, and he believed § 87(2)(b) used his own cellphone to make those calls, but he did not search § 87(2)(b)'s cellphone during the incident. Police Officer Blair and Detective Carrasco were unaware of any officers who searched § 87(2)(b)'s cellphone at the stationhouse.

The officers and § 87(2)(b) provided contradicting accounts of these allegations that did not establish credibility for one party any more than the other, but that does not disregard the possibility that these allegations may have occurred. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Abuse of Authority: At the 44th Precinct Stationhouse in the Bronx, Police Officer John McGee strip-searched § 87(2)(b)

Allegation (H) Abuse of Authority: At the 44th Precinct Stationhouse in the Bronx, Police Officer Ryan Blair strip-searched § 87(2)(b)

Allegation (I) Abuse of Authority: At the 44th Precinct Stationhouse in the Bronx, Detective Edward Carrasco strip-searched § 87(2)(b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In a follow-up statement (Board Review 13), § 87(2)(b) stated that upon arriving to the stationhouse, Police Officer Blair and Detective Carrasco escorted him to a room where he was instructed to remove his clothes. At the time § 87(2)(b) was wearing his pants, thermal pants, and underwear respectively. The officers instructed § 87(2)(b) to remove his pants and he did so, which exposed his thermal pants. The officers instructed § 87(2)(b) to remove his thermal pants, which exposed his underwear. The officers did not instruct § 87(2)(b) to remove his underwear and they did not touch § 87(2)(b) during this process. § 87(2)(b) eventually put his pants back on and the officers escorted him to a holding cell.

Police Officer Blair stated that at the stationhouse, § 87(2)(b) was only searched at the front desk

where his property was vouchered, and no additional searches of him were conducted. Police Officer Blair did not remember which officer searched § 87(2)(b) in front of the desk. From the front desk, § 87(2)(b) was escorted to a holding cell and his arrest was processed. § 87(2)(b) was not taken to a room prior to being placed in the holding cell and he was not instructed to remove his pants. § 87(2)(b) was not strip-searched at the stationhouse. By the time they arrived at the stationhouse, Police Officer Blair did not have any reason to believe that § 87(2)(b) had any additional contraband on his person.

Detective Carrasco stated that Police Officer McGee only conducted a regular search of § 87(2)(b) in front of the desk. From the front desk, Police Officer McGee placed § 87(2)(b) in a holding cell and he processed his arrest. Detective Carrasco was unaware of anyone who instructed § 87(2)(b) to remove his pants at the stationhouse, and he did not recall a strip-search being conducted on § 87(2)(b) during the incident. Detective Carrasco explained that a strip-search would have been documented if it was done.

Police Officer McGee stated that the officers escorted § 87(2)(b) to a private room at the stationhouse where he was thoroughly searched. Police Officer McGee explained that a thorough search meant removing § 87(2)(b)'s clothes until exposing his last layer of clothing - presumably his underwear. The officers instructed § 87(2)(b) to remove his pants and he did so. Police Officer McGee did not remember if § 87(2)(b) was wearing thermal pants at the time of the incident, but if he was wearing them, then the officers would have instructed him to remove it as well so they could examine his underwear and ensure he did not have anything there.

Police Officer McGee said that a strip-search was not conducted on § 87(2)(b) during the incident because he defined a strip search as instructing a prisoner to remove all of their clothing until they are completely naked. Police Officer McGee explained that a strip-search would have to be documented in the Command Log, the Arrest Report, and the officers' Memo Books. A supervisor was not informed about the thorough search that was conducted on § 87(2)(b) because they would only be advised if it was a strip-search. When asked if at the time he arrived at the stationhouse he had any reason to believe that § 87(2)(b) had any additional contraband on his person besides what had been already found, Police Officer McGee said that due to his experience as a police officer, he believes an individual arrested for a drug offense always has additional contraband.

Patrol Guide Procedure 208-05 defines a strip-search as any search in which an individual's undergarments and/or private areas are exposed (Board Review 09). A strip-search can only be conducted when an officer suspects that an individual may be concealing contraband that could not be found through alternate search methods. Strip-searches are not routine and they cannot be conducted without a supervisor's approval. Any strip-searches conducted must be documented in the Command Log, the Arrest Report, and the officers' Memo Books.

The 44th Precinct's Command Log, § 87(2)(b)'s Arrest Report, and the officers' Memo Books from the incident date did not have any records regarding a strip-search that was conducted on § 87(2)(b) (Board Review 02) (Board Review 10).

§ 87(2)(b) alleged that Police Officer Blair and Detective Carrasco strip-searched him at the stationhouse, but given Police Officer McGee and Detective Carrasco's statements, the investigation determined that Police Officer McGee was present for the strip-search as well. Although Police Officer Blair and Detective Carrasco did not acknowledge that a strip-search took place during the incident, Police Officer McGee confirmed that the officers escorted § 87(2)(b) to a private room where he was instructed to remove his pants. Police Officer McGee's description of the search that was conducted on § 87(2)(b) at the stationhouse is intertwined with the NYPD's

definition of a strip-search. According to the Patrol Guide, the moment § 87(2)(b) exposed his underwear to the officers, the search became a strip-search regardless of what Police Officer McGee believed at the time. In addition, the officers did not have any articulable reason to believe that § 87(2)(b) had any additional contraband on his person at the time they arrived at the stationhouse, § 87(2)(g)

§ 87(2)(g) Police Officer McGee's statement corroborated § 87(2)(b)'s allegations, the investigation credited § 87(2)(b)'s account of events regarding the strip-search, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Police Officer Blair has been a member of service for eight years and this is the first CCRB complaint to which he has been a subject.
- Police Officer McGee has been a member of service for twenty-two years and has been a subject in eight CCRB complaints and twenty-one allegations, none of which were substantiated. § 87(2)(g)
- Detective Carrasco has been a member of service for eleven years and has been a subject in eight CCRB complaints and twenty-two allegations, of which one was substantiated:
 - Case #201305210 involved a substantiated allegation of physical force against Detective Carrasco. The Board recommended instructions and the NYPD imposed no penalty.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)
- On January 6, 2020, a Notice of Claim request was sent to the New York City Office of the Comptroller, and the results will be added to the case file upon receipt.

Squad No.: 7

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature _____ Print Title & Name _____ Date _____